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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,854	08/18/2003	Michelle Gaster	PGST0001/MRK	4051
29524	7590	12/12/2006	EXAMINER	
KHORSANDI PATENT LAW GROUP, A.L.C. 140 S. LAKE., SUITE 312 PASADENA, CA 91101-4710			GRAY, PHILLIP A	
			ART UNIT	PAPER NUMBER
			3767	

DATE MAILED: 12/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/642,854

Applicant(s)

GASTER, MICHELLE

Examiner

Phillip Gray

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/2/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This office action is in response to applicant's communication on 11/2/2006.

Currently amended claims 1-22 are pending and rejected below.

Response to Arguments

Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gawlik et al. (U.S. Patent Number 4,807,837) in view of McGaha (U.S. Patent Number 4,114,273) and in further view of Eidem (U.S. Patent Number 4,832,294). Gawlik discloses a medical fluid administration device for delivering medical fluids (see figures 1-2), with a telescoping pole (12), (spring loaded button at elements 112, 156), a means for suspending medical fluid or pump (14), and a carrying case (80). McGaha discloses a lockable extension-retraction tube-winding device (see device at figures 1, 2, 6). Eidem discloses a portable I.V. stand with infusion pumps (see figures 1, 3).

Gawlik et al. (U.S. Patent Number 4,807,837) discloses the claimed invention except for a lockable extension-retraction tube-winding device. McGaha teaches that it is known to use a lockable extension-retraction tube-winding device as set forth in paragraphs at column 4 through 7 to provide a convenient, easy to use, slack free hose distribution system. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the medical fluid administration device as taught by Gawlik with a lockable extension-retraction tube-winding device as taught by McGaha, since such a modification would provide the medical fluid administration device with a lockable extension-retraction tube-winding device for providing a convenient, easy to use, slack free hose distribution system.

Gawlik in view of McGaha discloses the claimed invention except for the use of infusion IV pumps. Eidem teaches that it is known to use infusion IV pumps as set forth in paragraphs at column 1-4, to provide a consistent flow of medical delivery fluids. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the medical fluid administration device as taught by Gawlik in view of McGaha with the use of infusion IV pumps as taught by Eidem, since such a modification would provide the medical fluid administration device with the use of infusion IV pumps for providing a consistent flow of medical delivery fluids.

Concerning claims 11-15, 18-22, Eidem discloses the claimed invention except for using a gastrointestinal pump, insulin pump, urine pump, or colostomy pump. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a gastrointestinal pump, insulin pump, urine pump, or colostomy pump

since it was known in the art that that a person of ordinary skill in the art would substitute the desired pump type to carry out the desired action, further they are recognized equivalents in the art and it would be obvious to substitute one for the other.

All the elements, in each of these prior art references, are fully capable of meeting all structural and functional limitations of the claims. Therefore the amended claims do not distinguish the applicant's invention over the prior art of record.

Concerning applicant's newly added amendments of "a medical container", a "pump", the "medical tubing with two ends being adapted for connection to a pump and the other for delivering fluids", and "winding the medical tubing as a coil and retracting the tubing from the coil when the stand is expanded/or collapsed". It is examiners position that all of these elements and functions are inherent in the prior art of record. McGaha for instance has the medical fluid container (attached to water dispenser 20) and also contains medical tubing which can be attached to a pump (not pictured but drive the water from dispenser 20) and the medical fluid container and the patient in any order. Further the winding of the medical tubing is as a coil and retracting the tubing can happen when the stand is expanded or collapsed (the dental stand 12 for example).

During examination, claim limitations are to be given their broadest reasonable reading. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Prater, 415 F.2d 1393, 1404-1405, 162 USPQ 541, 550-51 (CCPA 1969).

In response to applicant's argument that the prior art is not adapted to have the tubing and cord reeling as in the applicants specification, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed

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invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in a patentable sense. *In re Hutchison*, 69 USPQ 138. In the instant case the tubing and pumping limitations as added in the amendments do not overcome the rejection. Specifically the amendments do not add any elements or structures not taught in the prior art of record and the elements of the prior art of record are fully capable of satisfying all functional, operational, spatial, and structural limitations as currently written in the claims. Therefore the rejections stand as proper and are maintained. It is recommended that applicant amend the claims to more specifically describe the elements of the invention that they deem novel over the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip Gray whose telephone number is (571) 272-7180. The examiner can normally be reached on Monday through Friday, 8:30 a.m. to 4:30 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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KEVIN C. SIRMONS
SUPERVISORY PATENT EXAMINER

Kevin C. Sirmons